

Defense Acquisition University

Acquiring Services Using Multiple Award Instruments Under Section 803

**DFARS Case 2001-D017
25 October 2002**



Overview

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- **Purpose**
- **Problem**
- **Abbreviations Defined**
- **Background**
- **Section 803**
- **Final Rule 2001-D017**



Purpose

To understand the changes in policies and procedures for the award of task orders for services in excess of \$100,000 as a result of Section 803 of Public Law 107-107



The Problem

**Congress believes that the
Department of Defense is not
following Congressional intent
with respect to competition in the
awarding of task orders for
services using multiple award
instruments**



Acronym

S

- **FSS – Federal Supply Schedule**
- **MAS – Multiple Award Schedules**
- **MAC – Multi-Agency Contract**
- **GWAC – Government-Wide Acquisition Contract**
- **IDIQ – Indefinite Delivery/Indefinite Quantity**
- **BPA – Blanket Purchasing Agreement**
- **BOA – Basic Ordering Agreement**



Background

A History Since

FASA

- **FASA permitted task orders using multiple award instruments**
- **Law requires all multiple award contractors be given “Fair Opportunity” to compete for task orders**
- **Only 5 specific exceptions to “Fair Opportunity”**



FAIR OPPORTUNITY EXCEPTIONS

- **Agency's need is of such unusual urgency that providing an opportunity to all awardees would result in unacceptable delays [FAR 16.505(b)(2)]**
- **Only one source is capable of responding due to the unique or specialized nature of the work [FAR 16.505(b)(2)]**
- **The new work is a logical follow-on to an existing task order where contractors were given a fair opportunity to be considered [FAR 16.505(b)(2)]**
- **The order must be placed with a particular contractor in order to satisfy a minimum guarantee. [FAR 16.505(b)(2)]**
- **There is a statute that authorizes or requires purchase from a particular source.**



GAO/NSIAD-98-215

Acquisition Reform: Multiple-award Contracting at Six Federal Organizations

Letter Report, 09/30/98

Audit Interest Items

- 1) Whether federal agencies provided a fair opportunity for contractors to receive orders under multiple-award contracts**
- 2) How service fees assessed on interagency orders compared with agencies' costs to process such orders**
- 3) If multiple-award contracts affected federal contracting opportunities for small businesses**



GAO/NSIAD-98-215

Letter Report, 09/30/98

- **Findings:** - short cuts were taken relative to competition.
 - One organization's procedures did not require ordering officials to report to the contracting officer whether all contractors had been considered for an order.
 - In another organization, the GAO found that it normally identified a preferred contractor when announcing plans to place orders for information technology services on its multiple-award contracts.



Congressional Interest

The National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261)

The act addressed the misuse and abuse of Task Order contracts, Multiple Award Contracts for services and Federal Supply Schedules by establishing better control of orders placed under multiple award contract instruments



DoD Policy Action DFARS Revision

March 25, 1999

Added Paragraph 217.500(b) to remind contracting personnel that all purchases over \$2,500 made for DoD by another agency, including orders under an agency task or delivery order contract, are subject to the Economy Act, IAW Section 814 of Public Law 105-261 unless the agency is identified by statute as an agent for the rest of the Government.



DoDIG Report No. 99-116

DoD Use of Multiple Award Task Order Contracts

April 2, 1999

Findings

- **78 percent of delivery orders for products were awarded competitively to the low bidder**
- **However, the award of task orders for services were not consistent with statutory requirements**



DoDIG Report No. 99-116

- **Task orders were awarded without regard to price even though price was not a substantial factor in the initial contract. As a result, 36 of 58 task orders were awarded to higher-priced contractors**
- **66 of 124 sole-source task orders were awarded without providing other contractors a fair opportunity to be considered. Only eight of those 66 orders had valid justification for sole-source award**



Director of Defense Procurement

Eleanor Spector Letter of April 30, 1999

- 1. Use Multiple Award Contracts only when all contractors are generally capable of performing all the proposed work.**
- 2. Use the follow-on exception only when all contractors were given a fair opportunity to be considered for the initial order.**



Eleanor Spector Letter of April 30, 1999

- 3. Price must be one of the decision elements for award of the task order. It is part of the best value decision where both price and technical quality must be considered.**
- 4. Document the file when applying an exception to fair opportunity or when placing orders with other than the low price offeror.**
- 5. Exercise care when reporting contracting actions since the DoDIG noted the unreliability of data relative to orders under multiple award task order arrangements.**

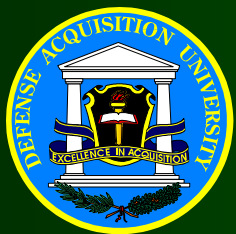


Director of Defense Procurement

Eleanor Spector Letter of July 20, 1999

Each military department to select 10 Multiple Award Contracts for services for further review relative to:

- **Number of contracts awarded for the requirement**
- **Type of services**
- **Number of competitive orders issued**
- **Number of offers for each potential order**
- **Number of orders placed with “fair opportunity to be considered” but no separate opportunity provided**



**Eleanor Spector
Letter of July 20,
1999**

**The requested information
became available on a routine
basis via the DD Form 350
beginning Oct 1, 2000.**

CONCLUSION

**The competition rate was worse
than first projected**



DoDIG Report No.

D-2000-100

Contracts for Professional, Administrative, and Management Support Services

March 10, 2000

**Reviewed 15 contracting activities and
program**

**offices managing 105 contracts for
services**



DoDIG Report No. D-2000-100

Recommendation

Contracts for services that exceed the statutory requirements should be converted to multiple-award contracts.

Relevant Findings

- **Inadequate competition**
- **Failure to award multiple-award contracts**



GAO/NSIAD-00-56

Letter Report, 03/20/2000

Audit Interest Items

- 1. Whether contractors were provided a fair opportunity to be considered for the contemplated work**
- 2. The extent of competition realized**
- 3. Determine how clearly ordering offices specified the tasks to be performed or property to be delivered under the orders**



GAO/NSIAD-00-56

Findings

Letter Report,
03/20/2000

- Many of the 22 large orders were awarded without competing proposals
- Agencies made frequent inappropriate use of the statutory exceptions to the fair opportunity requirement
- Contractor's told GAO that if program officials were interested in receiving competing proposals, then more outreach activities should be conducted



GAO/NSIAD-00-56

Letter Report,
03/20/2000

- **Contractors frequently did not submit proposals when provided an opportunity to do so**
- **In 16 of 22 cases representing about \$444 million out of \$553 million only one proposal was received, and it came from the incumbent contractor**
- **Work descriptions for most orders defined tasks broadly and did not establish fixed prices for the work**
- **Several broadly defined orders were later defined by sole-source work orders**



Congressional Interest

The National Defense Authorization Act for Fiscal Year 2000

(Pub. L. 106-65)

Subsections 804(a) and 804(b)

The act addressed the misuse and abuse of Task Order contracts, Multiple Award Contracts for services and Federal Supply Schedules by establishing better control of orders placed under multiple award contract instruments



FAR Case 99-014

April 25, 2000

- **Promulgated in response to Public Law 106-65**
- **FAR 16.5 was modified to address how to properly plan for, compete, and administer multiple award task or delivery order contracts**
- **Clarifies what contracting officers must consider when deciding if a multiple award contract is appropriate**
- **Requires that all awardees be given a fair opportunity to compete on every task or delivery order placed under multiple-award contracts unless a specific exception applies**



FAR Case 99-014 April 25, 2000

When placing orders, the contracting officer should consider:

- The scope and complexity of the contract requirement**
- The expected duration and frequency of task or delivery orders**
- The mix of resources a contractor must have to perform expected task or delivery order requirements**
- The ability to maintain competition among the awardees throughout the contract's period of performance**



FAR Case 99-014 April 25, 2000

- **Requires contracting officers to document their decision on whether or not to use a multiple award contract in the acquisition plan or contract file**
- **Emphasizes the use of performance based statements of work**
- **Provides guidance on how to develop tailored order placement procedures**
- **Requires that cost or price be considered as one of the factors when placing an order**
- **Requires contracting officers to establish prices for each order that was not priced under the basic contract using the policies and methods in Subpart 15.4**
- **Requires contracting officers to document the order placement rationale and price in the contract file**



FAC 2001-09
FAR Case 99-303

Task and Delivery Order Contracts

- **Provides additional regulatory guidance resulting from Pub. L. 106-65**
- **Provide definitions and specific policies on the appropriate use of Government-wide acquisition contracts (GWACs), and Multi-agency contracts (MACs).**



DoDIG Report No. D-2001-189

Multiple Award Contracts for Services

**September 30, 2001
Findings**

Reviewed 423 task orders (FY 2000 - 2001)

- The services and DFAS competed between 18% and 26% of their respective task orders**
- Of the competed orders, only 69 percent received more than 1 response.**
- Many offices cited contracting officer discretion as the reason they did not compete the orders (NOTE-- this is NOT a legitimate exception)**



DoDIG Report No. D-2001-189

Recommendations

- **Change the FAR to require that all awardees be given the opportunity to be considered on ALL task orders unless there is a valid and signed exception (D&F).**
- **The Under Secretary should direct program offices and requiring activities to stop designating sources on at least 75% of orders.**
- **Provide remedial training and track compliance thru metrics. Remind COs to assess suitability of the work for multiple awards in acquisition planning and have the senior contracting officials or the ombudsman sign exceptions.**
- **Remind COs that the logical follow on exception only applies to work on the instant contract.**



Section 803

Section 803 of P.L. 107-107 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.



Section 803 FSS Orders Over \$100,000

The CO must EITHER

- **Issue the notice to as many schedule holders as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that proposals will be received from at least 3 sources that offer the required work**

OR

- **Contact all schedule holders that offer the required work by informing them of the opportunity for award**

Market research is key. COs must understand which schedule contractors can do the work.



Section 803 FSS Orders Over \$100,000

- **If less than 3 proposals are received, the CO must document why reasonable efforts would not result in more offers. COs have discretion, but it is linked to good market research.**
- **The only exceptions to “fair opportunity” are the 5 exceptions specified under FASA**



Section 803 Contracts Other than FSS over \$100,000

- **All awardees that offer the required work must be provide a copy of the description of work, the basis upon which the contracting officer will make the selection, and given the opportunity to submit a proposal .**
- **The CO must consider all proposals submitted.**
- **The only exceptions to “fair opportunity” are the 4 exceptions specified under FASA and any statute authorizing or directing a particular source**



Final Rule 2001-D017

DFARS Changes Implementing Section 803

Modifies 208.404 - Ordering Procedures for Optional Use Schedules

- **PART 208—Required Sources of Supplies and Services**
- **SUBPART 208.4—Federal Supply Schedules**



Final Rule 2001-D017

FAR 8.404(b)(2) addresses orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.

The DFARS change states that the procedures at FAR 8.404(b)(2) regarding review of catalogs or pricelists of at least three schedule contractors do not apply to orders for services exceeding \$100,000. Instead, use the procedures at 208.404-70.



Final Rule 2001- D017

FAR 8.404(b)(3) Orders exceeding the maximum order threshold.

(i) For orders for services exceeding \$100,000, use the procedures at 208.404-70 in addition to the procedures at FAR 8.404(b)(3)(i).

FAR 8.404(b)(7) Documentation. For orders for services exceeding \$100,000, use the procedures at 208.404-70 in addition to the procedures at FAR 8.404(b)(7).]



Final Rule 2001-D017

DFARS 208.404-70 Additional ordering procedures for services

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107); and

(2) Also applies to orders placed by non-DoD agencies on behalf of DoD.



Final Rule 2001-D017

(b) Each order for services exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

- (1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or**
- (2) A statute expressly authorizes or requires that the purchase be made from a specified source.**



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(c) An order for services exceeding \$100,000 is placed on a competitive basis only if the contracting officer provides a fair notice of the intent to make the purchase, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, to—



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(1) As many schedule contractors as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that offers will be received from at least three contractors that can fulfill the work requirements, and the contracting officer—

(i)(A) Receives offers from at least three contractors that can fulfill the work requirements; or

(B) Determines in writing that no additional contractors that can fulfill the work requirements could be identified despite reasonable efforts to do so; (documentation should clearly explain efforts made to obtain offers from at least three contractors); and

(ii) Ensures all offers received are fairly considered; or



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(2) All contractors offering the required services under the applicable multiple award schedule, and affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered. Posting of a request for quotations on the General Services Administration's electronic quote system, "e-Buy" (www.gsaAdvantage.gov), is one medium for providing fair notice to all contractors as required by this paragraph (c).



Final Rule 2001-D017

(d) Single and multiple blanket purchase agreements (BPAs) may be established against Federal Supply Schedules (See FAR 8.404(b) (4)) if the contracting officer—

(1) Follows the procedures in paragraphs (b) and (c) of this subsection; and



Final Rule 2001-D017

(2)(i) For a single BPA, defines the individual tasks to be performed; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all multiple BPA holders before placing orders; and

(3) Reviews established BPAs no less than annually to determine whether the BPA still represents the best value.



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(e) Orders placed against Federal Supply Schedules may be credited toward the ordering agency's small business goals (see FAR 8.404(b)(6)).]



Final Rule 2001-D017

DFARS Changes Implementing Section 803

Modifies Subpart 216.5 - Indefinite Delivery Contracts

- **PART 216—Types of Contracts**



Final Rule 2001-D017

[216.501-1 Definition.

“Multiple award contract,” as used in this subpart, means—

- (1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or**
- (2) Any other indefinite delivery, indefinite quantity contract that an agency enters into with two or more sources under the same solicitation.]**



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216.505-70 Orders for services under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107);

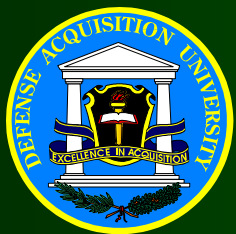
(2) Applies to orders for services exceeding \$100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) and (2) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules).



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(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.



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(b) Each order for services exceeding \$100,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.



Final Rule 2001-D017

(c) An order for services exceeding \$100,000 is placed on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor shall perform and the basis upon which the contracting officer will make the selection, to all contractors offering the required services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.



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(d) When using the procedures in this subsection—

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;



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(3) The competition requirements in FAR Part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.]



Summary

Section 803 addresses task orders over \$100,000 for services

Policy has changed

Emphasis is on increasing competition

When in doubt - provide all qualified contractors the opportunity to be considered for award



Questions?

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